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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CS(OS) No.1874/1997

VIKRAM SANDHU ..... Plaintiff

Through: Ms. Risha Mittal and Mr. Bhrigu Dhami, Advs.

versus

SARDAR BHAG SINGH & ORS. ..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% 20.02.2017

IA No.2217/2017 (under Order IX Rule 9 read with Section 151 CPC), IA No.2218/2017 (under Section 5 of Limitation Act, 1963 read with Section 151 CPC) and IA No.2219/2017 (under Section 151 CPC for condonation of 16 days delay in re-filing).

1. The plaintiff in this suit for specific performance, after more than eleven years of dismissal thereof for non-appearance, seeks restoration.

2. Not only are the averments in the application for restoration vague but are totally unsupported by any documents. Though the applicant/plaintiff at the time of institution of the suit claimed to be in possession of the premises agreed to be sold for a sale consideration of Rs.27,00,000/- out of which the plaintiff claimed to have paid Rs.1,00,000/- only and on perusal of the file it transpires that the suit for possession filed against the applicant/plaintiff was also pending at that stage and the counsel for the applicant/plaintiff today states that applicant/plaintiff today is not in possession but neither any particulars in that regard have been given nor any documents with respect to the proceedings in the suit for possession been filed.

3. It has been vaguely stated that an appeal was filed against the decree for possession and which was allowed.

4. It is inexplicable as to why the applicant/plaintiff, when filed the appeal against the decree for possession, did not activate the present suit or as to why the applicant/plaintiff did not become aware of the dismissal of the suit in default when possession of the premises was taken from the applicant/plaintiff.

5. It cannot be lost sight of that the applicant/plaintiff in a suit for specific performance of an Agreement of Sale is required to be ready and willing throughout the pendency of the suit also and the conduct of the applicant/plaintiff shows that the applicant/plaintiff indeed was not ready and willing and no purpose for this reason also will be served in restoring the suit if ultimately it has to suffer the same fate.

6. However the counsel for the applicant/plaintiff being young, it is deemed appropriate to grant an opportunity.

7. List on 16th March, 2017 as sought.

RAJIV SAHAI ENDLAW, J

FEBRUARY 20, 2017
'pp'..